

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY J. COOK,	)	
	)	
Petitioner,	)	No. C 05-4321 CRB (PR)
	)	
vs.	)	ORDER OF DISMISSAL
	)	
RICHARD KIRKLAND, Warden, et al.,	)	(Doc # 2)
	)	
Respondent(s).	)	
_____	)	

Petitioner, a state prisoner at Pelican Bay State Prison ("PBSP"), has filed a pro se petition for a writ of habeas corpus challenging his indefinite placement in administrative segregation on the basis of being a prison gang affiliate.

The petition for a writ of habeas corpus is DISMISSED without prejudice to filing a civil rights complaint under 42 U.S.C. § 1983. Although the Supreme Court has not addressed whether a challenge to a condition of confinement may be brought under habeas, see Bell v. Wolfish, 441 U.S. 520, 526 n.6 (1979), the Ninth Circuit has held that habeas jurisdiction is absent, and a § 1983 action proper, where, as here, a successful challenge to a prison condition will not necessarily shorten the prisoner's sentence. Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003). In addition, the preferred practice in the Ninth Circuit has been

1 that challenges to conditions of confinement be brought in a civil rights complaint.  
2 See Badaea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action is proper  
3 method of challenging conditions of confinement); Crawford v. Bell, 599 F.2d  
4 890, 891-92 & n.1 (9th Cir. 1979) (affirming dismissal of habeas petition on basis  
5 that challenges to terms and conditions of confinement must be brought in civil  
6 rights complaint).

7 The clerk shall enter judgment in accordance with this order, terminate all  
8 pending motions (see, e.g., doc # 2) as moot, and close the file. No fee is due.  
9 SO ORDERED.

10 DATED: November 02, 2005

  
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CHARLES R. BREYER  
United States District Judge